

## 46 Am. Jur. 2d Judges § 45

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### Judges

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### VI. Privileges, Exemptions, and Disabilities

#### A. In General

## § 45. Political activity of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  20, 21

### A.L.R. Library

[Election campaign activities as ground for disciplining attorney, 26 A.L.R.4th 170](#)

It is highly improper for a judge or a candidate for a judicial position to serve upon party committees or make partisan speeches.<sup>1</sup> Although statutes which prohibit judges from actively participating in politics by making political speeches, or actively or officially participating in political meetings, violate the constitutional guaranty of freedom of speech,<sup>2</sup> a prohibition in the code of judicial conduct against a judge or judicial candidate personally soliciting campaign funds complies with the First Amendment.<sup>3</sup>

A state's judicial conduct rule, prohibiting judicial candidates from personally soliciting campaign funds, was narrowly tailored to the state's asserted compelling interests for regulating speech, i.e., protecting the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary; a narrow slice of speech was restricted, the rule left judicial candidates free to discuss any issue with any person at any time, and while judicial candidates could not say, "Please give me money," they could direct their campaign committees to do so.<sup>4</sup> For purposes of First Amendment analysis, a canon of judicial ethics prohibiting judicial candidates from personally soliciting campaign contributions was narrowly tailored to serve compelling state interests in preserving the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary; the restriction of the right of judges to engage in political activity protected the independence of the judiciary, and the canon permitted judges to solicit campaign funds through a separate campaign committee, insulating judges from the solicitation and receipt of funds

while leaving open, ample alternative means for candidates to raise the resources necessary to run campaigns.<sup>5</sup> Likewise, a code of judicial conduct rule prohibiting judicial candidates from personally soliciting campaign contributions except in writing or when speaking to groups of 20 or more individuals was narrowly tailored to advance a compelling state interest in protecting donors from coercion, as required for the rule to overcome a free-speech facial challenge under the First Amendment, where the prohibition of one-on-one solicitation was the least restrictive means of advancing the state's interest in preventing coercion resulting from the intimacy of in-person solicitation.<sup>6</sup> A supreme court rule prohibiting candidates for judicial office from personally soliciting or accepting campaign contributions is constitutional as applied to judicial candidates, even if they are not sitting judges.<sup>7</sup>

A part-time municipal court judge whose law partner made political contributions from the firm's joint business account did not violate a canon of the code of judicial conduct prohibiting a judge from making a contribution to a political organization or candidate, even though circumstances created an undeniable appearance that the judge shared responsibility for the contributions, where the judge had orally instructed the partner and staff not to issue any more political contributions, and the judge's partner acknowledged that the partner was responsible for all of the political contributions made.<sup>8</sup>

A code of judicial conduct rule, prohibiting a judge from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, expressly applied to only "a judge," and thus, a judicial candidate's statement in a voters' pamphlet, suggesting that a trial academy the candidate attended at Stanford Law School was affiliated with the school, did not violate the rule.<sup>9</sup> However, even if a judicial candidate's statement in a voters' pamphlet qualified as a "false statement" for purposes of the code of judicial conduct rule, prohibiting a judicial candidate from knowingly or with reckless disregard for the truth making any false statement, there was not clear and convincing evidence that the candidate acted with the requisite mental state in making the statement supporting the party's judicial candidacy, as would establish a violation of the rule.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Judge violated Judicial Conduct Rule providing that a judge or judicial candidate shall not seek, accept, or use endorsements from a political organization, or partisan or independent non-judicial office-holder or candidate, where judge's social media page contained endorsements from two partisan candidates and a political organization, and judge endorsed two partisan candidates for non-judicial offices. Mont. Code of Jud. Conduct, Rule 4.1(A)(7). *Halverson v. Harada*, 2020 MT 89, 461 P.3d 869 (Mont. 2020).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 *In re Charges of Judicial Misconduct*, 404 F.3d 688 (2d Cir. Jud. Council 2005); *Matter of Katic*, 549 N.E.2d 1039 (Ind. 1990); *In re Fadeley*, 310 Or. 548, 802 P.2d 31 (1990).
- 2 *Matter of Disciplinary Proceeding Against Blauvelt*, 115 Wash. 2d 735, 801 P.2d 235 (1990).
- 3 *In re Fadeley*, 310 Or. 548, 802 P.2d 31 (1990).
- 4 *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 191 L. Ed. 2d 570 (2015).
- 5 *The Florida Bar v. Williams-Yulee*, 138 So. 3d 379 (Fla. 2014).
- 6 *Ohio Council 8 American Federation of State, County, and Mun. Employees, AFL-CIO v. Brunner*, 912 F. Supp. 2d 556 (S.D. Ohio 2012).

7 Winnig v. Sellen, 731 F. Supp. 2d 855 (W.D. Wis. 2010) (Wisconsin rule).  
8 In re Boggia, 203 N.J. 1, 998 A.2d 949 (2010).  
9 In re Miller, 358 Or. 741, 370 P.3d 1241 (2016).  
10 In re Miller, 358 Or. 741, 370 P.3d 1241 (2016).

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